IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CENTRAL EXCISE APPEAL NO. 64 OF 2006
WITH
CENTRAL EXCISE APPEAL NO. 100 OF 2006.

The Commissioner of Central Excise,
Mumbai. ... Appellant.

V/s.

M/s.Bombay Dyeing & Mfg. Co. Ltd. ... Respondent.

K.R.Chaudhary for the appellant.

Atul Setalwad, senior counsel with M.H.Patil
i/b. Prem Ranga for the respondent.

CORAM : V.C.DAGA AND J.P.DEVADHAR, JJ.

DATED : 13th July 2006.

P.C. :

. Heard learned counsel for the rival parties. Perused record.

2. The order of the Tribunal revolves around the findings of fact recorded by the Tribunal, which are reproduced hereinbelow for immediate reference:

> ".....There is no dispute that the deemed credit taken by the appellant is less than the actual duty paid on the yarn contained in the grey fabrics. The actual quantity of duty of yarn contained is reflected in the Central excise invoices issued by the spinning units to textile mills. Therefore the plea of the appellants that they are entitled to actual credit is required to be accepted."

3. It is needless to mention that an alternate plea can always be taken before the

Tribunal in view of the judgment of the Apex Court in the case of **National Thermal Power Co.Ltd. v. C.I.T.**, (1998) 229 ITR 383.

4. Having said so, turning to the alternate plea entertained by the Tribunal, which as stated above, revolves around the findings of fact recorded by the Tribunal. We, therefore, do not see any substantial question of law involved in this appeal.

5. In the result, appeal is dismissed in limine with no order as to costs.

(J.P.DEVADHAR, J.) **(V.C.DAGA J.)**